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Wm. S. Stribert CP

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-190806

DATE: April 13, 1978

MATTER OF: Pension Benefit Guaranty Corporation - Waiver
Authority

DIGEST: Wholly owned Government corporation was given power to sue and be sued in its own name. Corporation therefore has power to compromise a claim without a suit. Although Comptroller General generally has authority to waive claims against employees for overpayments of pay, 5 U.S.C. 5584(f) provides that such authority does not affect authority under other statutes to litigate or waive claims. Since the Corporation has power to sue and be sued, to incur liabilities, and do all other acts necessary to the conduct of its business, it has independent authority to waive claims for overpayments of pay.

By a letter dated November 15, 1977, Mr. Henry Rose, General Counsel of the Pension Benefit Guaranty Corporation (Corporation) requested our decision whether the Corporation has authority independent from that of 5 U.S.C. 5584 to waive a claim which it has against an employee for an overpayment of compensation.

The Corporation was established by title IV of the Employment Retirement Income Security Act of 1974, 29 U.S.C. 1301 et seq., to administer a program of pension plan termination insurance. It is one of the wholly owned Government corporations enumerated in the Government Corporation Control Act, as amended, 31 U.S.C. 846. Pursuant to 29 U.S.C. 1302(b)(6) (Supp. IV, 1974), the Corporation has the power to appoint and fix the compensation of necessary officers, attorneys, employees, and agents. Persons appointed to such positions are employees of the United States and subject generally to the provisions of title 5 of the United States Code. The Corporation's receipts and disbursements are not included in the budget of the United States Government. 29 U.S.C. 1302(f)(2). The covered pension plans pay to the Corporation premiums which are deposited in revolving funds established for its use in executing its functions, including payment of operations and administrative expenses. 29 U.S.C. 1305 (Supp. IV, 1974). Mr. Rose advises that the Corporation's employees are compensated from the revolving funds and that a refund of pay would be credited to the revolving fund.

Provisions for the waiver of claims against Government employees for overpayments of pay and allowances are found in

B-190806

5 U.S.C. 5584. That statute provides generally that such claims may be waived when collection would be against equity and good conscience and not in the best interest of the United States. Generally, waiver may be granted by the heads of agencies when the claim aggregates not more than \$500, and by the Comptroller General in other cases. However, 5 U.S.C. 5584(f) provides that:

"This section does not affect any authority under any other statute to litigate, settle, compromise, or waive any claim of the United States."


The Pension Benefit Guaranty Corporation has the authority "to sue and be sued, complain and defend, in its corporate name and through its own counsel, in any court, State or Federal." 29 U.S.C. 1302(b)(1) (Supp. IV, 1974). Citing our decision in 25 Comp. Gen. 685 (1946), Mr. Rose states that the power to sue and be sued includes the power to compromise a claim without a lawsuit. Since the Corporation has the authority to prosecute a claim against its employees, Mr. Rose concludes that it has independent authority, under 5 U.S.C. 5584(f), to choose whether or not to waive the claim. Further, we note that the Pension Benefit Guaranty Corporation has the authority to incur liabilities and to do all other acts necessary to the conduct of its business. 29 U.S.C. 1302(b)(f).

This Office has long recognized that most wholly owned Government corporations have been granted the power to sue and be sued in their own name. As noted above, in 25 Comp. Gen. 685, supra, we held that such power includes the power to compromise a claim without a lawsuit. Also, such corporations usually have the authority to make such expenditures as are necessary to carry out functions or to determine the character and necessity of their obligations and expenditures. Thus, we have traditionally held that claims involving such corporations are for settlement by them, are not within the jurisdiction of the General Accounting Office. B-179464, March 27, 1974; 53 Comp. Gen. 337 (1973).

Although under 5 U.S.C. 5584, the Comptroller General generally has authority to waive claims for overpayments exceeding \$500, by virtue of subsection 5584(f), that power is not exclusive. The Pension Benefit Guaranty Corporation has the power to sue and be sued, to incur liabilities, and do all other acts necessary to the conduct of its business. As noted above, in these circumstances,

B-190506

we hold the Corporation has authority independent from that of 5 U.S.C. 5584 to waive a claim which it has against an employee for an overpayment of compensation, and the matter need not be referred to this Office for a determination.


Deputy Comptroller General
of the United States